COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

TRUSTEES OF DSR REALTY TRUST[1] **v.**	**BOARD OF ASSESSORS OF THE TOWN OF HUDSON**
Docket Nos. F271997 & F277720	
TRUSTEES OF AIAS REALTY TRUST[2] **v.**	**BOARD OF ASSESSORS OF THE TOWN OF HUDSON**
Docket Nos. F271996 & F277721	Promulgated: February 27, 2007

These are appeals under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65, from the refusal of the appellee to abate taxes on certain real estate in the Town of Hudson assessed to the appellants under G.L. c. 59, §§ 11 and 38 for fiscal years 2004 and 2005.

Commissioner Egan heard these appeals. Commissioners Scharaffa and Rose joined her in the decisions for the appellee.

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

Matthew A. Luz, Esq. for the appellants.

Aldo A. Cipriano, Esq. for the appellee.

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[1] According to the petitions filed in these appeals, Richard G. Durand, Stephen J. Durand, and Richard G. Durand, Jr. were, at all relevant times, the trustees of DSR Realty Trust.

[2] According to the petitions filed in these appeals, Richard G. Durand, Jr. and Stephen J. Durand were, at all relevant times, the trustees of AIAS Realty Trust.

FINDINGS OF FACT AND REPORT

On January 1, 2003 and January 1, 2004, the appellants, the trustees of DSR Realty Trust ("DSR") and the trustees of AIAS Realty Trust ("AIAS"), were the assessed owners of contiguous parcels of real estate located in the Town of Hudson, which together comprised an automobile dealership. The subject properties have frontage along the westerly side of Washington Street, also known as Route 85. This area of Hudson is primarily commercial and has reasonable access to the regional highway system, Interstate 495.

The trustees of DSR owned 223 Washington Street, which, at all relevant times, was composed of a 2.59-acre lot improved with a freestanding automobile dealership building. The building contains showroom, office, and parts and service areas on the ground level, as well as other related space on a second level. In addition to these areas, there are lavatories located on both the ground and second levels, as well as in the basement level. This structure was originally built as a restaurant in 1980, but was renovated and adapted to its present use in 1991. The overall exterior and interior of the building were, at all relevant times, in at least average condition. There is a large asphalt-paved area situated in front and to the left side of the building that is utilized for displaying about two-hundred-and-fifty vehicles for sale.

The trustees of AIAS owned 239 Washington Street, which, at all relevant times, was composed of a 2.79-acre lot improved with a smaller freestanding retail building used in connection with the sales of used automobiles. This structure was built in 2002, and its interior and exterior are in overall good condition. There is a small asphalt-paved area situated in front of the building and a larger asphalt-paved area situated in the rear of the site. These areas are utilized for displaying about fifty vehicles for sale. A wetland area of about 1.4 acres is located within the front to middle of the parcel.

For fiscal year 2004, the Board of Assessors of Hudson ("assessors") valued 223 Washington Street and 239 Washington Street at $1,690,700 and $496,200, respectively, and assessed taxes thereon, at the rate of $20.97 per thousand, in the corresponding amounts of $35,453.98 and $10,405.31. Hudson's Treasurer/Collector mailed the fiscal year 2004 actual tax bills on or about December 31, 2003. In accordance with G.L. c. 59, § 57C, the appellants paid the taxes assessed without incurring interest.

On or about January 2, 2004, in accordance with G.L. c. 59, § 59, the appellants timely filed their applications for abatement with the assessors. The assessors denied the applications on March 3, 2004 and sent notice of their denial to the appellants on the next day. On March 18, 2004, in accordance with G.L. c. 59, §§ 64 and 65, the appellants seasonably filed their petitions with the Appellate Tax Board (“Board”). On the basis of these facts, the Board found and ruled that it had jurisdiction over the fiscal year 2004 appeals.

For fiscal year 2005, the assessors valued 223 Washington Street and 239 Washington Street at $1,691,200 and $497,000, respectively, and assessed taxes thereon, at the rate of $22.73 per thousand, in the corresponding amounts of $38,440.98 and $11,296.81. Hudson’s Treasurer/Collector mailed the fiscal year 2005 actual tax bills on or about December 31, 2004. In accordance with G.L. c. 59, § 57C, the appellants paid the taxes assessed without incurring interest.

On or about January 5, 2005, in accordance with G.L. c. 59, § 59, the appellants timely filed their applications for abatement with the assessors. The assessors denied the applications on March 9, 2005 and sent notice of their denials to the appellants on the next day. On April 20, 2005, in accordance with G.L. c. 59, §§ 64 and 65, the appellants seasonably filed their petitions with the Board. On the basis of these facts, the Board found and ruled that it had jurisdiction over the fiscal year 2005 appeals.

The appellants presented their case-in-chief, challenging the assessments, primarily through the testimony and appraisal report of their real estate valuation witness, Eric Wolff. The assessors defended the assessments principally through the testimony and submissions of their real estate valuation independent contractor, James Keane, who had determined the subject assessments for the assessors for the fiscal years at issue. A summary of the parties' evidence follows.

To ascertain the subject properties' highest and best use and to develop estimates of the subject properties' values for the fiscal years at issue using income-capitalization and sales-comparison methodologies,[3] Mr. Wolff stated that he inspected the subject and comparable properties, reviewed the applicable zoning regulations, investigated the area's real estate market, researched transfers of what he considered to be comparable properties, interviewed market participants, and obtained information from several relevant publications and public resources such as *Banker and Tradesman*, *The Boston Globe*, the Middlesex County Registry of Deeds, and the offices of Hudson's assessors, tax collector, and building inspector. Relying on

[3] Mr. Wolff considered but did not develop a cost approach because of the buildings' age and what he considered to be the inherent reliability of the sales-comparison and income-capitalization approaches for estimating the value of properties like the subject properties.

data from these sources, Mr. Wolff first determined that the subject properties' highest and best use was their continued joint use as an automobile dealership. He concluded that, at all relevant times, the subject properties best functioned "interdependently" thereby offsetting whatever their individual limitations and deficiencies were with respect to frontage, visibility, shape, size, composition, and similar such factors.

In his sales-comparison approach, Mr. Wolff compared the subject automobile dealership to the sales of five other automobile dealerships in Marlboro, Hudson, Natick, Randolph, and Raynham. These purportedly comparable properties were sold in February 2005, November 2004, April 2003, January 2002, and December 2001, respectively, and brought unadjusted per-square-foot sale prices of $88.82, $106.78, $149.39, $72.83, and $72.79, respectively. Mr. Wolff then adjusted the prices paid, per square foot of building area, for these properties to account for their differences with the subject properties. The factors for which he adjusted include location, physical condition, size, and visibility. He considered but did not adjust for the conditions and dates of the sales. Mr. Wolff also adjusted each of the comparable sales upward by ten percent to reflect the presence of what he estimated to be 3,000 square feet of what he termed "mezzanine" space in the building at 223

Washington Street and the absence of such space in the purportedly comparable properties' buildings.

After adjustment, Mr. Wolff's per-square-foot sale prices ranged from $79.94 to $90.76. The $90.76 per-square-foot value was obtained from his only comparable sale located in Hudson. This automobile dealership was situated on Coolidge Street, approximately two miles from the subject properties. Mr. Wolff selected a mid-range value of $85.00 per square foot in estimating the total value of the subject automobile dealership at $1,650,000 for both of the fiscal years at issue. He did not include the 3,000 square feet of the so-called "mezzanine" space in his 19,423-square-foot estimate of the subject buildings' combined areas. Mr. Wolff then allocated seventy-five percent of this value, or $1,240,000, to 223 Washington Street, and twenty-five percent of the value, or $410,000, to 239 Washington Street, for both of the fiscal years at issue.

In his income-capitalization approach, Mr. Wolff estimated what he considered to be an appropriate market rent by comparing the subject automobile dealership to eleven other dealerships located in Norwell, Brockton, Danvers, Milford, Stoneham, Natick, Boston, Weymouth, and Beverly. The rent paid by these purportedly comparable automobile dealerships, on a triple net basis, ranged from a dealership in Brockton's rent of $6.00 per square foot to a dealership in Stoneham's rent of $25.48 per square foot. The median rent, which a dealership in Natick paid, was $13.00 per square foot. Mr. Wolff selected what he considered to be a fair market rent of $9.00 per square foot on a triple net basis for the subject properties for the fiscal years at issue. Once again, he estimated the area of the buildings on the subject properties at 22,423 square feet.[4] Accordingly, his potential gross income

[4] In contrast to the 19,423-square-foot combined building area used in his sales-comparison approach, the area that Mr. Wolff used in his income-capitalization methodology included an approximation of 3,000 square feet for what he termed “mezzanine” space. He estimated the first floor and “mezzanine” areas of the building at 223 Washington Street at 21,503 square feet and the area of the building at 239 Washington Street at 920 square feet. Mr. Wolff did not measure the areas associated with the subject buildings.

figure was $201,807.

Mr. Wolff stated, without providing any underlying data or information, that the vacancy rate for automobile dealership space in the Hudson area for the relevant valuation dates ranged from ten to fifteen percent. Based on the subject properties' location, relative size, and current physical condition, he selected a vacancy and credit loss rate for the subject properties at the high end of this range, fifteen percent. Accordingly, his effective gross income figure was $171,536.

For expenses, Mr. Wolff observed that tenants in similar space are responsible for all operating expenses except management fees and structural costs. He, therefore, only applied a management fee of five percent of effective gross income and a replacement reserve allowance equal to three percent of potential gross income in deriving a stabilized net income of $156,905 before capitalization. Again, Mr. Wolff did not provide any underlying support for the expense percentages that he used in this income-capitalization technique.

In determining his overall capitalization rate of ten percent, Mr. Wolff utilized a band-of-investment technique for which he assumed loan-to-value and equity-to-value ratios of seventy-five and twenty-five percent, respectively, a mortgage capitalization rate of 9.67%, an equity capitalization rate of sixteen percent, as well as an equity build-up factor. He did not state the length of the amortization period that he used or provide underlying support for the mortgage and equity capitalization rates that he selected. Mr. Wolff assumed that the subject properties would not appreciate during the relevant time period. He then divided his net income figure of $156,905 by his ten-percent overall capitalization rate and estimated the total value of the subject properties at $1,570,000. Mr. Wolff again allocated seventy-five percent, or $1,180,000, of this value to 223 Washington Street and twenty-five percent, or $390,000, to 239 Washington Street.

Mr. Wolff reconciled his estimates of the subject properties' values for the fiscal years at issue by relying almost entirely on the values that he derived from his comparable-sales methodology. He stated that the unit price paid per square foot of building area is more frequently used in the appraisal of automobile dealership properties than the income-capitalization approach. Consequently, he used the values that he obtained from his income-capitalization methodology only as a rough check on the values that he derived from his sales-comparison approach. As a result of his analyses, Mr. Wolff estimated the values of 223 Washington Street and 239 Washington Street at $1,240,000 and $410,000, respectively, for both of the fiscal years at issue in these appeals.

Before testifying about the valuation methodologies that he used to estimate the value of the subject properties for the fiscal years at issue, the assessors' valuation witness, Mr. Keane, testified that Mr. Wolff used faulty data and information in his two methodologies, which caused Mr. Wolff to significantly undervalue the subject properties. First, relying on the assessors' records, Mr. Keene observed that Mr. Wolff had underestimated the gross area of the building located at 223 Washington Street by approximately 7,000 square feet. According to the assessors' property record card, that building's gross square footage was 28,791 square feet.

Second, Mr. Keane testified that the fifty-six foot and one-hundred-and-ten-foot frontages, which Mr. Wolff reported for 223 Washington Street and 239 Washington Street, respectively, were also incorrect. According to the assessors' maps, which were originally prepared by a land surveyor and then updated by a geographic information system, the respective frontages were one-hundred-and-twenty-one and two-hundred-and-ninety-two linear feet, respectively. Third, Mr. Keane explained that the so-called "mezzanine" located in the building at 223 Washington Street is actually a viable second level, which supports, among other things, office and conference space. According to that building's architectural plans and Mr. Keane's observations, the usable space on the second level measures

6,092 square feet, not just the 3,000 square feet used in Mr. Wolff's methodologies. Moreover, according to the architectural plans, the building at 223 Washington Street contains 26,834 square feet of usable space, not including the basement, where, according to Mr. Keane, approximately 397 square feet was used for lavatories.

Mr. Keane also estimated the values of the subject properties for fiscal years 2004 and 2005 using sales-comparison and income-capitalization techniques, except for fiscal year 2005 where he only used an income-capitalization approach to value 239 Washington Street. Unlike Mr. Wolff, however, Mr. Keane valued the subject properties separately because, as he explained, they had different owners and very different structures erected on them, and they had also been assessed separately for the fiscal years at issue. He did admit in his testimony, however, that the subject properties functioned as one and he would have preferred to have valued them that way.

In his sales-comparison approach for 223 Washington Street, Mr. Keane relied on three sales in Hudson, which occurred in 2000, 2003, and 2004. Both the 2000 and 2003 sales were of automobile dealerships or automobile sales and service businesses also located on Washington Street, only one-eighth of a mile from the subject properties. The 2000 and 2003 sales were for $815,000 and $1,700,000, respectively, which Mr. Keane then adjusted to account for differences with 223 Washington Street for such factors as date of sale, site, quality, age, condition, building interior, gross leaseable area, finished area in basement, and paving and parking. After making these adjustments, the 2000-sale property indicated a value of $1,539,600 for 223 Washington Street for fiscal year 2004 and $1,580,400 for fiscal year 2005, while the 2003-sale property indicated a value of $1,935,700 for 223 Washington Street for fiscal year 2004 and $2,020,700 for fiscal year 2005.

Mr. Keane's third comparable-sale property was also an automobile dealership located approximately two miles from 223 Washington Street. It is the same automobile dealership in Hudson that Mr. Wolff used in his methodology. This property sold for $2,225,000 in mid-November of 2004. After adjusting this sale price for date of sale, location, site, age, gross leaseable area, and finished area in basement, Mr. Keane found an indicated value of $2,001,000 for 223 Washington Street for fiscal year 2004 and $2,112,250 for fiscal year 2005. He placed the most weight on the two Washington Street properties nearest to 223 Washington Street in estimating its value at $2,000,000 for both of the fiscal years at issue in these appeals.

In his income-capitalization approach for both fiscal years 2004 and 2005, Mr. Keane applied a rent of $10.50 per square foot to 223 Washington Street's 27,231 square feet of leaseable space for a potential gross income of $285,926. Using a vacancy rate of five percent, he calculated an effective gross income of $271,629. In reaching his $230,885 net income figure for capitalization, Mr. Keane subtracted from his effective gross income various expenses totaling fifteen percent of effective gross income, including five percent for management, two percent for legal and accounting, 3.5% for structural repairs (presumably short-lived), 1.5% for insurance, and three percent for reserves. He then divided his $230,885 net income amount by a capitalization rate of 9.0716% plus a 2.0970% tax factor for fiscal year 2004 and a 2.2730% tax factor for fiscal year 2005. Mr. Keane premised his capitalization rate on a loan-to-value ratio of seventy percent, a mortgage rate of 7.25 percent over a twenty-five year term, and an equity rate based on a return of ten percent. Like Mr. Wolff, Mr. Keane provided limited underlying data and information supporting his vacancy and expense percentages and the components of his capitalization rate. He also failed to provide adequate support for his assigned rent.

Mr. Keane's income-capitalization methodology produced rounded indicated values for 223 Washington Street of $2,067,000 for fiscal year 2004 and $2,035,000 for fiscal year 2005, which, according to Mr. Keane, confirmed the $2,000,000 value that his sales-comparison method suggested for the 223 Washington Street property for fiscal years 2004 and 2005.

To determine the value of 239 Washington Street for the fiscal years at issue, Mr. Keane used a similar income-capitalization technique to the one that he employed for valuing 223 Washington Street. He did not use a sales-comparison approach because of a purported lack of any comparable sales. In his income-capitalization methodology, Mr. Keane applied a twenty-five dollar per-square-foot rent to, what he determined to be, a 920-square-foot building that is located on the property and then added to that amount another $1.00 per-square-foot rent for 60,000 square feet of land, which, according to Mr. Keane, served as additional parking for 223 Washington Street. These two rental streams amounted to a potential gross income of $83,000. He reached his effective gross income of $78,850 by reducing his potential gross income by five percent to account for vacancy. After subtracting fifteen percent from effective gross income to account for expenses, Mr. Keane calculated a net income of $67,023. Mr. Keane then divided his net income by the same capitalization rate plus tax factors that he used in his income-capitalization approach for valuing 223 Washington Street for the two fiscal years at issue. As with the income-capitalization approach that he used to value 223 Washington Street, Mr. Keane provided scant underlying data and information supporting his vacancy and expense percentages and the components of his capitalization rate. He again failed to provide adequate support for his assigned rent. This methodology produced rounded indicated values for 239 Washington Street of $600,000 for fiscal year 2004 and $591,000 for fiscal year 2005.

After considering all of the evidence, and reasonable inferences drawn therefrom, the Board found that the subject properties' highest and best use was, as Mr. Wolff suggested, their existing use as an integrated automobile dealership. The Board found that the subject properties' existing use best fulfilled the criteria, set forth in the Opinion below, for their highest and best use. Even Mr. Keane, who valued the two subject properties individually, readily admitted at trial that they best functioned as one and probably should be valued together.

In addition, the Board agreed with Mr. Wolff's approach of valuing the subject properties together, as a commercial unit, and then allocating from that estimate individual values to each of them. The Board found that his approach was consistent with its finding regarding the subject properties' highest and best use for the two fiscal years at issue. At the same time, the Board found that Mr. Keane's technique of valuing the subject properties individually was inconsistent with its finding of their highest and best use for the two fiscal years at issue.

The Board, however, did find that some of the information relied upon by Mr. Keane was adequately substantiated and was, therefore, useful in its consideration of Mr. Wolff's implementation of his sales-comparison and income-capitalization methodologies.

The Board also found that, in executing his procedures for valuing the subject properties as a whole and then allocating from that estimate separate values to each property, Mr. Wolff included numerous errors, inaccuracies, and unsubstantiated assumptions in his two valuation methodologies, which compromised their reliability as well as the estimated values and allocations derived from them. More specifically, Mr. Wolff relied on an inaccurate estimate of the 223 Washington Street property's useable space resulting in an inaccurate estimate of the subject properties' combined useable area, which caused him to significantly underestimate the values of the subject properties in both of his methodologies. The Board found that the combined area for the subject properties, including the second level of 223 Washington Street, was approximately 27,754 square feet, thousands of square feet more than that supposed by

Mr. Wolff.[5] The Board found that, if this total area of useable space (which does not include the use of any basement space) were substituted for that used by Mr. Wolff in Mr. Wolff's methodologies, the resulting values would support the assessments, even if Mr. Wolff's upward adjustments for the presence of "mezzanine" space in 223 Washington Street but not in the comparables were excised from his sales-comparison approach.

Next, the Board found that, in his income-capitalization methodology, Mr. Wolff failed to provide sufficient data or back-up information substantiating the vacancy rate, expense percentages, or assumptions underlying the capitalization rate that he selected. Accordingly, the Board found that the figures that he used in his income-capitalization approach were unreliable and resulted in flawed values for the subject properties.

Moreover, the Board found that Mr. Wolff's failure to consider, in his sales-comparison approach, the two sales of Hudson automobile dealership or automobile sale properties located on Washington Street near the subject properties, as well as his significant miscalculation of the subject

[5] To find the combined useable area of the subject properties, the Board primarily relied on the 26,834-square-foot figure, which Mr. Keane testified was part of the architectural plans for the 223 Washington Street property, plus the 920-square-foot figure for 239 Washington Street which both parties' real estate valuation witnesses used in their methodologies.

properties’ frontage on Washington Street, further compromised the values derived from that approach. The Board found that the frontages suggested by Mr. Keane, which virtually doubled Mr. Wolff’s, were again adequately supported. Furthermore, Mr. Wolff’s selection, from the range of values produced by his sales-comparison approach, of a per-square-foot value for the subject properties that was well below the indicated value of the one Hudson dealership sale that he did include in his sales-comparison approach, appeared self-serving and lacked credibility.

Finally, the Board noted that Mr. Keane’s methodologies also contained numerous unsubstantiated estimates and assumptions, which rendered the values that he derived from his valuation techniques suspect as well. Accordingly, the Board only used from the assessors’ evidence that which was adequately supported, while giving little consideration to the rest.

On the basis of these findings and analyses, the Board found that the appellants failed to prove that the assessors had overvalued the subject properties for fiscal years 2004 and 2005. Accordingly, the Board decided these appeals for the appellee.

OPINION

The assessors are required to assess real estate at its fair cash value. G.L. c. 59, § 38; ***Coomey v. Assessors of Sandwich***, 367 Mass. 836, 837 (1975). 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). Accordingly, fair cash value means fair market value. ***Id.***

The assessment is presumed valid unless the taxpayer sustains the burden of proving otherwise. ***Schlaiker v. Board of Assessors of Great Barrington,*** 356 Mass. 243, 245 (1974). Accordingly, the burden of proof is upon the appellants to make out their right as a matter of law to an abatement of the tax. ***Id.*** The appellants must show that the assessed valuations of their property were improper. *See* ***Foxboro Associates v. Board of Assessors of Foxborough,***
385 Mass. 679, 691 (1982).

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 reproductions. ***Correia v. New Bedford Redev. Auth.,*** 375 Mass. 360, 362 (1978).

But "[p]rior to valuing the subject propert[ies], [their] highest and best use must be ascertained, which has been defined as the use for which the propert[ies] would bring the most." ***Tennessee Gas Pipeline Co. v. Assessors of Agawam***, ATB Findings of Fact and Reports 2000-859, 875 (citing ***Conness v. Commonwealth***, 184 Mass. 541, 542-43 (1903); ***Irving Saunders Trust v. Assessors of Boston***, 26 Mass. App. Ct. 838, 843 (1989) and the cases cited therein). "[T]he phrase 'highest and best use' implies the selection of a single use for . . . property and . . . the Board is required to make its best judgment as to what that use is likely to be, considering all the evidence presented." ***New England Telephone and Telegraph Co. v. Board of Assessors of the Town of Framingham***, ATB Findings of Fact and Reports 1988-95, 150. In determining the properties' highest and best use, consideration should be given to the purpose for which the properties are adapted. *See* ***Leen v. Board of Assessors of Boston***, 345 Mass. 494, 504 (1963); ***Boston Gas***, 334 Mass. at 566. A property's highest and best use must be legally permissible, physically possible, financially feasible, and maximally productive. APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE at 305-308 (12th ed., 2001); *see also* ***Skyline Homes, Inc. v. Commonwealth***, 362 Mass. 684, 687 (1972); ***DiBiase v. Town of Rowley***, 33 Mass. App. Ct. 928 (1992). Property cannot be valued on the basis of hypothetical or future uses that are remote or speculative. *See* ***Skyline Homes***, 362 Mass. at 687; ***Tigar v. Mystic River Bridge Authority***, 329 Mass. 514, 518 (1952); ***Salem***

Country Club, Inc. v. Peabody Redevelopment Authority, 21 Mass. App. Ct. 433, 435 (1986).

In the present appeals, the Board found and ruled that the subject properties' existing use of being integrated into an automobile dealership was their highest and best use. The Board found that the subject properties best met the highest-and-best-use criteria by functioning jointly as an automobile dealership. This finding and ruling comported with the appellants' real estate valuation witness's determination of highest and best use and the assessors' real estate valuation witness's concession at trial. The Board further found and ruled that the assessors' real estate valuation witness's approach of valuing the two subject properties individually, thereby suggesting separate highest and best uses for each of them, was speculative and not supported by the evidence.

"[S]ales of property usually 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***, 385 Mass. at 682. Sales of comparable realty in the same geographic area and within a reasonable time of the assessment date contain credible data and information for determining the value of the property at issue. ***McCabe v. Chelsea***, 265 Mass. 494, 496 (1929).

In the present appeals, the Board found that a sales-comparison technique was an appropriate way to value the subject properties together as an automobile dealership. However, the data and information used by the appellants' real estate valuation witness contained numerous compromising errors, inaccuracies, and unsubstantiated assumptions. In addition, with only one exception, he failed to include in his analysis the recent sales of other automobile dealerships in Hudson, including two located on the same street as the subject properties. The Board ruled that these mistakes and oversights corrupted the value and allocations that he derived from his sales-comparison approach and rendered them unreliable. Moreover, the Board found and ruled that even if it accepted the per-square-foot value suggested for the subject properties by the appellants' real estate valuation witness, the correct application of the subject properties' actual square footage, as found by the Board, would produce values supporting the assessments.

The income-capitalization method "is frequently applied with respect to income-producing property." ***Pepsi-Cola Bottling Co. v. Assessors of Boston***, 397 Mass. 447, 449 (1986). The Board found and ruled in the present appeals that an income-capitalization method was an appropriate technique to use to value, or at least check the value derived from a sales-comparison approach, of the subject properties for the fiscal years at issue. However, the Board also found that the appellants' real estate valuation witness failed to provide sufficient supporting data or information substantiating the vacancy rate, expense percentages, or assumptions underlying the capitalization rate that he selected. The Board ruled that these mistakes and oversights sullied the value and allocations that he derived from his income-capitalization approach and rendered them unreliable. Moreover, as with his sales-comparison approach, the Board found and ruled that if it applied the subject properties' correct square footage, as found by the Board, to the rents suggested by the appellants' real estate valuation witness, the resulting value derived from his income-capitalization approach would support the assessments.

"[The Board can] accept such portions of the evidence as appear[s] to have the more convincing weight." ***Boston Consol. Gas***, 309 Mass. 60, 72 (1941). See also ***North American Philips Lighting Corp. v. Assessors of Lynn***, 392 Mass. 296, 300 (1984); ***New Boston Garden Corp. v. Assessors of Boston***, 383 Mass. 456, 473 (1981); ***Jordan Marsh Co. v. Assessors of Malden***, 359 Mass. 106, 110 (1971). "'[However] [e]vidence of a party having the burden of proof may not be disbelieved without an explicit and objectively adequate reason.'" ***New Boston Garden***, 383 Mass. at

470-71, quoting L.L. JAFFEE, JUDICIAL CONTROL OF ADMINISTRATIVE ACTION 607-608 (1965).

In these appeals, the Board based its findings on the more convincing evidence and explicitly stated its objectively adequate reasons for disbelieving or discounting the appellants' evidence. On the basis of all of the evidence, and reasonable inferences drawn therefrom, as well as its subsidiary findings, the Board ultimately found and ruled that the appellants failed to demonstrate that the subject properties were overvalued for the fiscal years at issue.

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

APPELLATE TAX BOARD

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

A true copy,

Attest: ____________________________
Assistant Clerk of the Board