

**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

**VERNON HILL DEVELOPMENT  
REALTY, LLC**

**v.**

**BOARD OF ASSESSORS OF  
THE CITY OF WORCESTER**

Docket Nos. F318445 (FY 2012)  
F320681 (FY 2013)

Promulgated:  
June 2, 2016

These are appeals under the formal procedure pursuant to G.L. c. 58A, § 7, G.L. c. 59, §§ 64 and 65, and 831 CMR 1.03 and 1.04, from the refusal of the Board of Assessors of the City of Worcester (the "assessors" or "appellee") to abate taxes on a parcel of real estate located in the City of Worcester owned by and assessed to Vernon Hill Development Realty, LLC (the "appellant") under G.L. c. 59, §§ 11 and 38 for fiscal years 2012 and 2013.

Commissioner Rose heard these appeals. Chairman Hammond and Commissioners Scharaffa and Good joined him in the corrected decisions for the appellant, which are promulgated simultaneously with these findings of fact and report.

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

*Patricia F. Gates, Esq.* for the appellant.

*John F. O'Day, Esq.* for the appellee.

### **FINDINGS OF FACT AND REPORT**

Based on the evidence submitted into the record at the hearing of these appeals, including testimony, expert and assessor reports, jurisdictional documents, as well as other submissions, the Appellate Tax Board (the "Board") made the following findings of fact.

#### **Introduction and Jurisdiction**

On January 1, 2011 and January 1, 2012, the appellant was the assessed owner of the parcel of real estate located at 121 Providence Street in Worcester (the "subject property"). For assessment and real estate tax purposes, the subject property is identified on map 35 as block 3, lot A1-B. The site associated with the subject property contains approximately 3.31 acres of land and is improved with two buildings with a combined rentable area of 137,897 square feet.<sup>1</sup> There is also an associated 2.21-acre parking-lot parcel, identified on map 5 as block 37, lot B, which is not subject to these appeals, but is nonetheless part

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<sup>1</sup> The appellant's real estate valuation expert used a total rentable area of 138,790 square feet in his income-capitalization methodology. The assessors used the slightly lower 137,897-square-foot measurement in their income-capitalization methodology. The evidence indicated that the assessors had measured the subject property's rental area using the same categories of rentable space that the Board used in its income-capitalization methodology. Accordingly, the Board adopted the rentable area measurements recommended by the assessors and their witness, Mr. Ford.

of the valuation analysis for the subject property. The parking-lot parcel is located at 124 Providence Street.

Building No. 1, which is known as the Bishop Wright Building, is a three-story, plus finished basement or ground level, masonry and steel-framed office building that was constructed in the 1950s and has an effective age of about 20 years. It contains 83,748 square feet of rentable space. Building No. 2, which is known as the Rose Building, is a five-story, including ground level, masonry and steel-framed office building that also was constructed in the early 1950s and has an effective age of 20 years. It contains 54,149 square feet of rentable space. As of the relevant valuation and assessment dates, the ground and first floors of the Bishop Wright Building were being used for medical offices, while the remaining floors were used for office space -- most of which the Commonwealth's Department of Social Services, now named the Department of Children and Families, occupied. At all relevant times, this building had a 5% vacancy. As of the relevant valuation and assessment dates, the Rose Building was completely vacant and in generally poor condition. There were, however, five active cell antennae located on its roof. The parties' real estate valuation experts agreed that, under the circumstances, the rentable area in the Rose Building was only suitable for mill and/or storage space.

For fiscal year 2012, the assessors initially valued the subject property at \$8,509,100, but reduced that value to \$5,483,100 in response to the appellant's abatement application and then maintained that reduced value for fiscal year 2013. Accordingly, for fiscal year 2012, the assessors initially assessed real estate taxes of \$247,359.54, at the tax rate of \$29.07 per thousand, but then reduced the tax by \$87,965.82 to \$159,393.72. For fiscal year 2013, the assessors assessed real estate taxes of \$169,153.64, at the tax rate of \$30.85 per thousand. In accordance with G.L. c. 59, § 57A, the appellant timely paid these taxes without incurring interest. Based on the appellant's timely payment of the real estate taxes and the jurisdictional information summarized in the following table, the Board found and ruled that, in accordance with G.L. c. 59, §§ 59 and 64-65, it had jurisdiction to hear and decide these appeals.

	<u>Tax Bill</u> <u>Mailed</u>	<u>Abatement</u> <u>Application Filed</u>	<u>Abatement</u> <u>Application Denied</u> <u>or Deemed Denied</u>	<u>Petition</u> <u>Filed</u>
<b>Fiscal Year 2012</b>	05/25/2012	06/21/2012	09/21/2012*	12/14/2012
<b>Fiscal Year 2013</b>	12/31/2012	01/25/2013	04/01/2013	06/27/2013

\* The Assessors partially abated the assessment for fiscal year 2012 in October, 2012, after the deemed-denial date.

**Brief History of the Appellant's Acquisition, Ownership, and  
Piecemeal Sale of the Subject Parcel**

The appellant purchased the then 25-acre St. Vincent Hospital property in December, 2000 for \$5.1 million with the

intention of commercially redeveloping it. At the time, the property consisted of a primary hospital building, which included the Bishop Wright Building, as well as the Rose Building, some residential parcels (including, an apartment building, five homes and an undeveloped house lot) located on an adjacent street, plus the 2.21-acre parking-lot parcel situated across the street from the hospital facility. Several months prior to that sale, in April, 2000, the hospital, with the exception of its outpatient oncology and inpatient psychiatric services, relocated to a new state-of-the-art medical center in a more appropriate Worcester location for a medical facility and nearer the highway system servicing the city. The outpatient oncology and inpatient psychiatry services remained in their respective lower-level and first-floor space in the Bishop Wright Building under a leaseback agreement. Shortly after purchasing the St. Vincent Hospital property, the appellant sold the related residential properties for approximately \$2 million. In 2006, the appellant leased an additional approximately 30,000 square feet of office space to the Commonwealth's Department of Social Services.

By 2007, the appellant recognized that commercial redevelopment was no longer a feasible option for the property so it arranged for the primary hospital building to be demolished while the remaining property was subdivided into two

lots, A1 and A2. The appellant sold the A2 lot to neighboring Worcester Academy for \$3,125,000. Following additional negotiations with Worcester Academy and pursuant to an October, 2009 purchase and sale agreement, the appellant agreed to further subdivide lot A1 into two parcels - lot A1-A consisting of 2.895 acres and lot A1-B consisting of 3.314 acres improved with the Bishop Wright and the Rose Buildings. Worcester Academy agreed to and did purchase lot A1-A in January, 2010 for \$2 million. As the final transaction, Worcester Academy also agreed to purchase lot A1-B (the subject property) and the parking lot for \$3 million, once the remaining leases in the Bishop Wright Building expired and the appellant demolished the existing buildings. At the time of the hearing, the parties expected that final sale to be consummated in the winter of 2015.

#### **Appellant's Case-In-Chief**

Four witnesses testified for the appellant. The first two were members of the LLC and the appellant's primary operatives and decision-makers. They described the property, its purchase, and its subsequent piecemeal liquidation to first lower their debt and ultimately to get out from under their holding once they realized that commercial redevelopment in that location was not viable. The appellant's third witness was the commercial real estate broker who marketed the property for rent. He

labeled the rentable portions of the Bishop Wright Building as being, at best, class C space; he depicted its basement/ground-level space as being challenging to rent for office purposes; and he described the parking-lot parcel as being a necessary adjunct to any commercial rentals on the subject property.

The appellant's real estate valuation expert, Michael J, O'Hara, used an income-capitalization analysis to value the main parcel and a sales-comparison approach to value the parking-lot parcel for the fiscal years at issue. Mr. O'Hara did not use a sales-comparison approach to value the main parcel because he had difficulty identifying sales of properties comparable to the subject property.

He considered the subject property's highest-and-best use to be its current commercial use. However, he assigned strictly office rents of \$13.50 to \$14.50 per square foot to the space in the Bishop Wright Building, including the levels that, during the relevant time period, were being utilized as more expensive medical office space. For the vacant and essentially decommissioned Rose Building, Mr. O'Hara assigned mill building or storage rents of \$2.50 per square foot. He projected a vacancy and collection loss rate of 27% and expenses that approximated 60% of potential gross income, including reserves, tenant improvements, and leasing commissions, as well as an \$80,640 expense for parking because he valued the subject

property and the parking-lot parcel using separate analyses and methodologies. Mr. O'Hara also included an income category of \$108,000 (\$120,000 less a 10% vacancy rate) for income attributable to the five cell antennae.

Mr. O'Hara's capitalization rates included base rates of 10.25% and 10.00% for fiscal years 2012 and 2013, respectively, coupled with an appropriate commercial tax factor given the gross-leasing scenario. He developed his base capitalization rates using ranges suggested in industry surveys, rates obtained from several sales of office buildings in nearby communities, and rates derived from a band of investment technique.

Using this overall methodology, Mr. O'Hara developed values for the subject property of \$2,020,000 for fiscal year 2012 and \$2,035,000 for fiscal year 2013. The following table summarizes his income-capitalization analyses.<sup>2</sup>

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<sup>2</sup> There are several computational errors in Mr. O'Hara's analysis which slightly increase his recommended value of the subject property for the fiscal years at issue.

**Mr. O'Hara's Income-Capitalization Methodology**  
**Fiscal Years 2012 & 2013**

<b>Potential Gross Income</b>		
Bishop-Wright Lower Level	21,445 SF x \$13.50/SF =	\$ 289,508
Bishop Wright Upper Levels	62,456 SF x \$14.50/SF =	\$ 905,612
Rose Bldg.	<u>54,889 SF x \$ 2.50/SF =</u>	<u>\$ 137,223</u>
<b>Sub-Total PGI</b>	138,790 SF	<b>\$1,332,343</b>
<b>Vacancy Collection-Loss Rate</b>	@ 27%	<b>(\$ 359,733)</b>
<b>Sub-Total Effective Gross Income</b>		
Plus Cell Antennae EGI	\$120,000 less 10% vacancy =	\$ 108,000
<b>Total Effective Gross Income</b>		<b>\$1,080,610</b>
<b>Expenses</b>		
Insurance		(\$ 20,000)
Utilities		(\$ 325,000)
Janitorial/Cleaning/Rubbish		(\$ 60,000)
Repairs & Maintenance		(\$ 210,000)
Parking		(\$ 80,640)
Management	6%	(\$ 54,682)
Professional Fees		(\$ 7,500)
Reserves	2%	(\$ 18,227)
Miscellaneous	1%	(\$ 9,114)
Tenant Improve./Leasing Comm.		(\$ 29,365)
<b>Total Expenses</b>		<b>(\$ 814,528)</b>
<b>Net-Operating Income</b>		
		<b>\$ 266,082</b>
FY 2012 Capitalized Value	@ 10.25% + 2.907% = 13.157%	\$ 2,022,361
<b>FY 2012 Rounded Value</b>		<b>\$ 2,020,000</b>
FY 2013 Capitalized Value	@ 10.00% + 3.085% = 13.085%	\$ 2,033,489
<b>FY 2013 Rounded Value</b>		<b>\$ 2,035,000</b>

For the parking-lot parcel, Mr. O'Hara used a sales-comparison approach which produced per-acre values of \$255,000 and \$270,000 for fiscal years 2012 and 2013, respectively, and concomitant rounded values of \$565,000 and \$595,000 for the 2.21-acre parcel.

**Assessors' Income-Capitalization Analysis**

For their part, the assessors offered an income-capitalization methodology similar to the one submitted by the

appellant's real estate valuation expert. Worcester's City Assessor, William J. Ford, prepared the report. He based his suggested rents, vacancy, and expenses on data that the assessors had obtained from the subject property and from what Mr. Ford described as other similar properties throughout Worcester. The primary difference between Mr. Ford's methodology and that utilized by the appellant's real estate valuation expert was the rent attributable to the space retained and leased back by St. Vincent for medical office use. The appellant's real estate valuation expert considered it suitable for just general office rentals while Mr. Ford assigned a higher medical office rent to it. There were also small differences in total expenses (although the difference is more pronounced on a percentage basis) and in capitalization rates. In addition, Mr. Ford assigned a higher income and no vacancy rate to the cell towers (but he undercounted them at 4 instead of 5). The following table summarizes his analysis for both fiscal years at issue.

**Mr. Ford's Income-Capitalization Methodology**  
**Fiscal Years 2012 and 2013**

<b>Potential Gross Income</b>		
Hospital - Bishop Wright Bldg.	51,278 SF x \$23.50/SF =	\$1,205,033
Office - Bishop Wright Bldg.	32,470 SF x \$14.00/SF =	\$ 454,580
Storage - Rose Bldg.	<u>54,149 SF x \$ 2.50/SF =</u>	<u>\$ 135,372</u>
<b>Sub-Total PGI</b>	137,897 SF	<b>\$1,794,985</b>
<b>Vacancy Collection-Loss Rate</b>	@ 20%	<b>(\$ 358,997)</b>
<b>Sub-Total Effective Gross Income</b>		<b>\$1,435,988</b>
<b>Expenses</b>		
Utilities		(\$ 355,000)
Payroll		(\$ 82,800)
Management	4.00%	(\$ 71,799)
Cleaning		(\$ 45,000)
Insurance	1.00%	(\$ 17,950)
Maintenance		(\$ 131,410)
Reserves	4.00%	(\$ 71,799)
Miscellaneous	2.50%	(\$ 44,875)
<b>Total Expenses</b>		<b>(\$ 820,633)</b>
Cell Sites Income	\$30,000 x 4 = \$120,000	<u>\$ 120,000</u>
<b>Net-Operating Income</b>		<b>\$ 735,355</b>
FY 2012 Capitalized Value	@ 9.86% + 2.91% = 12.77%	\$ 5,758,458
<b>FY 2012 Rounded Value</b>		<b>\$ 5,758,000</b>
FY 2013 Capitalized Value	@ 9.86% + 3.09% = 12.95%	\$ 5,679,295
<b>FY 2013 Rounded Value</b>		<b>\$ 5,679,000</b>

The following table compares the assessments to the values estimated by Mr. Ford and by Mr. O'Hara:

	<u>Fiscal Year 2012</u>	<u>Fiscal Year 2013</u>
<b>Assessments</b>	\$ 5,483,100	\$ 5,483,100
<b>Mr. Ford's Values</b>	\$ 5,758,000	\$ 5,679,000
<b>Mr. O'Hara's Values</b>	\$ 2,020,000	\$ 2,035,000

**The Board's Income-Capitalization Methodology**  
**and Ultimate Findings on Value**

As a starting point, the Board agreed with the parties that the subject property's highest-and-best use for the fiscal years at issue was a continuation of its use as a multi-tenanted commercial property with parking for medical, governmental, and private office use, as well as storage space. The Board further agreed that an income-capitalization methodology was the best technique to use to value the subject property. The Board also found that the most appropriate way to value the subject property was as an integrated commercial complex in conjunction with the parking-lot parcel because: that is how these properties were used during the relevant time period, as well as both before and for several years thereafter; the appellant's commercial real estate broker linked the commercial viability of the subject property to its use of the parking-lot parcel; both parties considered the subject property's then present use to be its highest-and-best use; the appellant's real estate valuation expert recognized the subject property's need for parking (but factored it in as an expense in his income-capitalization methodology for valuing the subject property and then separately valuing the parking-lot parcel using a sales-comparison approach); and, as set forth in the Opinion section below, there is ample precedent in prior Board cases for treating multiple

parcels, like these, as an integrated complex when they, in fact, function that way and it represents their highest-and-best use. The rents suggested by the appellant's real estate valuation expert and the assessors also pre-suppose parking. Accordingly, the Board utilized an income-capitalization methodology to value the subject property and the parking-lot parcel as a commercial unit and then proportionally allocated the overall value developed by using a ratio derived from the subject property's and parking-lot parcel's assessments.

For rents, the Board used a medical rent of \$19.00 for the space built out and utilized - historically, during the relevant time period, and even thereafter - for medically related purposes, and office rents of \$14.00 for the remaining rentable area in the Bishop Wright Building. The chosen medical rent is at the lowest end of that range because of the subject property's age, condition, and inferior location for medical uses. The office rent is the one proposed by the assessors and is the mid-point of the office rents suggested by the appellant's real estate valuation expert. For the mill or storage space in the Rose Building, the Board adopted a rent of \$2.50 per square foot which was the rental rate recommended by both the appellant's real estate valuation expert and the assessors and was also the rental rate best supported by the record.

For vacancy and collection loss, the Board adopted 20% of potential gross income, which was the percentage proposed by the assessors and which was within the range suggested by market data. The Board found that the 27% rate advocated by the appellant's real estate valuation expert was simply too high for these properties. During the relevant time period, the Bishop Wright Building had a 95% occupancy rate, and the Rose Building's abandonment was a business decision that was not directly reflective of the market.

For expenses, the Board adopted the amounts and percentages that the assessors used in their income-capitalization methodology, which represents essentially what the appellant had reported to the assessors for the subject properties. The Board noted that the total expense amounts used by the appellant's real estate valuation expert and the assessors in their respective methodologies were nearly identical with both of them claiming that their expense recommendations were based on or checked with data obtained from the market.

Both the appellant's real estate valuation expert and the assessors included cell tower income in their analyses. The Board also included this income in its methodology because, at all relevant times, it was a steady source of income derived from the subject property. The Board found that the appellant's real estate valuation expert's presentation was well supported

and credible, and it therefore adopted the potential gross income of \$120,000 and vacancy and collection loss rate of 10% suggested by the appellant's real estate valuation expert for this source of income. The Board found that any expenses associated with the cell towers were subsumed in its previously adopted expenses which were based for the most part on the actuals. The Board agreed with the appellant's real estate valuation expert that there were five cell towers on the Rose Building at all relevant times and found that the assessors had inexplicably under-counted, by one, the number of cell towers actually in place.

For capitalization rates, the appellant's real estate valuation expert reviewed industry surveys, developed rates from recent sales of nearby properties, and synthesized a base rate using a band-of-investment technique. His base rates were 10.25% and 10.00% for fiscal years 2012 and 2013, respectively. The assessors derived a base rate of 9.86% for both fiscal years at issue also using a band-of-investment approach. Based on the parties' similar suggested rates, the underlying data, and the history of and foiled redevelopment plans for the subject property, the Board adopted capitalization rates of 10.00% for both fiscal years at issue. Because of the gross-leasing scenario, the Board employed full tax factors (as the parties

did) of 2.907% for fiscal year 2012 and 3.085% for fiscal year 2013.

The following table summarizes the income-capitalization methodology adopted by the Board to find the fair cash value of the subject property for the fiscal years at issue.

**Board's Income-Capitalization Methodology**  
**for Fiscal Years 2012 and 2013**

<b>Potential Gross Income</b>		
Hospital - Bishop Wright Bldg.	51,278 SF x \$19.00/SF =	\$ 974,282
Office - Bishop Wright Bldg.	32,470 SF x \$14.00/SF =	\$ 454,580
Storage - Rose Bldg.	54,149 SF x \$ 2.50/SF =	\$ 135,372
<b>Sub-Total PGI</b>	137,897 SF	<b>\$1,564,234</b>
<b>Vacancy Collection-Loss Rate</b>	@ 20%	<b>(\$ 312,846)</b>
<b>Sub-Total Effective Gross Income</b>		<b>\$1,251,388</b>
Plus Cell Antennae EGI	\$120,000 less 10% vacancy =	<b>\$ 108,000</b>
<b>Total Effective Gross Income</b>		<b>\$1,359,388</b>
<b>Expenses</b>		
Utilities		(\$ 355,000)
Payroll		(\$ 82,800)
Management	4.00%	(\$ 62,569)
Cleaning		(\$ 45,000)
Insurance	1.00%	(\$ 15,642)
Maintenance		(\$ 131,410)
Reserves	4.00%	(\$ 62,569)
Miscellaneous	2.50%	(\$ 39,106)
<b>Total Expenses</b>		<b>(\$ 794,096)</b>
<b>Net-Operating Income</b>		<b>\$ 565,292</b>
FY 2012 Capitalized Value	@ 10.00% + 2.907% = 12.907%	\$ 4,379,732
Assessment/Allocation Ratios:		
Subject Property - \$5,483,100/\$6,365,700 = 86%		\$ 3,766,570
Parking-Lot Parcel - \$882,600/\$6,365,700 = 14%		\$ 613,162
<b>FY 2012 Subject Property's Rounded Value</b>		<b>\$ 3,765,000</b>
<b>FY 2012 Parking-Lot Parcel Rounded Value</b>		<b>\$ 615,000</b>
FY 2013 Capitalized Value	@ 10.00% + 3.085% = 13.085%	\$ 4,320,153
Assessment/Allocation Ratios:		
Subject Property - \$5,483,100/\$6,365,700 = 86%		\$ 3,715,332
Parking-Lot Parcel - \$882,600/\$6,365,700 = 14%		\$ 604,821
<b>FY 2013 Subject Property's Rounded Value</b>		<b>\$ 3,715,000</b>
<b>FY 2013 Parking-Lot Parcel Rounded Value</b>		<b>\$ 605,000</b>

### Conclusion

Based on the foregoing, the Board concluded that the subject property was overvalued by \$1,718,100 for fiscal year 2012 and \$1,768,100 for fiscal year 2013, and the Board therefore decided these appeals for the appellant. The Board granted abatements in the amounts of \$49,945.17 for fiscal year 2012 and \$54,545.89 for fiscal year 2013, as calculated in the following table.

	<u>Docket No. F318445</u> <u>Fiscal Year 2012</u>	<u>Docket No. F320681</u> <u>Fiscal Year 2013</u>
<b>Assessed Value*</b>	\$ 5,483,100	\$ 5,483,100
<b>Fair Cash Value</b>	<u>\$ 3,765,000</u>	<u>\$ 3,715,000</u>
<b>Abated Value</b>	\$ 1,718,100	\$ 1,768,100
<b>Commercial Tax Rate</b>	\$29.07/\$1,000	\$30.85/\$1,000
<b>Tax Abatement</b>	<b>\$49,945.17</b>	<b>\$54,545.89</b>

\* As abated for fiscal year 2012.

### OPINION

The assessors are required to assess real estate at its fair cash value. G.L. c. 59, § 38. Fair cash value is defined as the price on which a willing seller and a willing buyer will agree if both of them are fully informed and under no compulsion. *Boston Gas Co. v. Assessors of Boston*, 334 Mass. 549, 566 (1956). In determining fair market value, all uses to which the property was or could reasonably be adapted on the relevant assessment dates should be considered. *Newton Girl Scout Council, Inc. v. Massachusetts Turnpike Authy.*, 335 Mass.

189, 193 (1956); **Irving Saunders Trust v. Assessors of Boston**, 26 Mass. App. Ct. 838, 843 (1989). The idea is to ascertain the maximum value of the property for any legitimate and reasonable use. **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). On this basis, the Board ruled that the highest-and-best use of the subject property during the fiscal years at issue in these appeals was, as the assessors and the appellant's real estate valuation expert posited, its continued use as multi-tenanted commercial property with parking for medical, governmental, and private office use, as well as storage space.

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. **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, neither the assessors nor the appellant's real estate valuation expert developed sales-comparison or cost approaches, and the record was essentially devoid of evidence to

support either methodology. They both reported that there were no sales in the market of comparable properties during the relevant time period, and they instead developed estimates of value using income-capitalization methodologies. Because of the lack of comparable sales, the Board agreed that the sales-comparison approach was not an appropriate methodology to use to estimate the value of the subject property. The Board further ruled that "[t]he introduction of evidence concerning the value based on [cost] computations has been limited to special situations in which data cannot be reliably computed under the other two methods." **Correia**, 375 Mass. at 362. The Board found that no such "special situations" existed here, and, even if they did, there was no credible evidence in the record on which to base a value using a cost approach.

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 Consol. Gas Co.**, 309 Mass. 60, 67 (1941). It is also an appropriate technique to use for valuing income-producing property. **Id.** at 64-65. In these appeals, the Board relied exclusively on the value determined from its income-capitalization methodology because the other approaches were not

appropriate, and the record contained sufficient credible evidence to estimate the value of the subject property using an income-capitalization methodology, which was the methodology that the assessors and the appellant's real estate valuation expert employed to estimate the value of the subject property. For the numerous reasons set out in its findings above, the Board further ruled that it was best to value the subject property and the parking-lot parcel as an integrated commercial complex and then allocate values. See, e.g., **23 West Bacon Corp. v. Assessors of Plainville**, Mass. ATB Findings of Fact and Reports 2000-678, 705-706 ("Because the Board treated both lots as one facility, the Board found one value for each fiscal year, which the parties were to apportion between the two parcels by Agreement.").

The income stream used in the income-capitalization method must reflect the property's earning capacity or economic rental value. **Pepsi-Cola Bottling Co.**, 397 Mass. at 451. Imputing rental income to the subject property based on fair market rentals from comparable properties is evidence of value if, once adjusted, they are indicative of the subject property's earning capacity. See **Correia v. New Bedford Redevelopment Auth.**, 5 Mass. App. Ct. 289, 293-94 (1977), *rev'd on other grounds*, 375 Mass. 360 (1978); **Library Services, Inc. v. Malden Redevelopment Auth.**, 9 Mass. App. Ct. 877, 878 (1980) (rescript);

**Avco Manufacturing Corp. v. Assessors of Wilmington**, Mass. ATB Findings of Fact and Reports 1990-142, 166. After accounting for vacancy and rent losses, the net-operating income is obtained by deducting appropriate expenses. **Pepsi-Cola Bottling Co.**, 397 Mass. at 452-53. "The issue of what expenses may be considered in any particular piece of property is for the board." **Alstores Realty Corp. v. Assessors of Peabody**, 391 Mass. 60, 65 (1984).

In the present appeals, for rents, the Board used medical, office, and storage rates. The medical rent which the Board adopted was at the lowest end of the range because of the subject property's age, condition, and inferior location for medical uses. The office rent which the Board adopted was the one proposed by the assessors and was at the mid-point of rents suggested by the appellant's real estate valuation expert. The mill or storage rent which the Board adopted was the market rate proposed by both the appellant's real estate valuation expert and the assessors. For vacancy and collection loss, the Board adopted the rate proposed by the assessors, which was within the range suggested by market data. For expenses, the Board adopted the amounts and percentages that the assessors used in their income-capitalization methodology which were nearly identical to the amounts used by the appellant's real estate valuation

expert. The subject property's historical performance as well as market data supported the adoption of these expenses.

The Board also included cell tower income in its methodology just as the appellant's real estate valuation expert and the assessors had. The Board adopted the appellant's real estate valuation expert's gross income and vacancy and collection loss rate because it was well supported, credible, and used the correct number of cell towers.

Based on the parties' similar suggested rates, the underlying data, and the history of and foiled redevelopment plans for the subject property, the Board adopted capitalization rates of 10.00% for both fiscal years at issue, which appropriately reflected a rate necessary to attract investment capital for this type of real estate. See **Taunton Redev. Assocs. v. Assessors of Taunton**, 393 Mass. 293, 295 (1984). Because of the gross-leasing scenario, the Board employed full tax factors (as the parties did) of 2.907% for fiscal year 2012 and 3.085% for fiscal year 2013. See **Assessors of Lynn v. Shop-Lease Co.**, 364 Mass. 569, 573 (1974).

In reaching its opinion of fair cash value in these appeals, 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. Rather, the Board could accept those portions of the evidence that the Board

determined had more convincing weight. **Foxboro Assocs. v. Assessors of Foxborough**, 385 Mass. 679, 683 (1982); **New Boston Garden Corp. v. Assessors of Boston**, 383 Mass. 456, 473 (1981); **New England Oyster House, Inc.**, 362 Mass. at 702. In evaluating the evidence before it, the Board formed its own independent judgment of fair cash value. **General Electric Co. v. Assessors of Lynn**, 393 Mass. 591, 605 (1984); **North American Philips Lighting Corp. v. Assessors of Lynn**, 392 Mass. 296, 300 (1984). The Board need not specify the exact manner in which it arrived at its valuation. **Jordan Marsh v. Assessors of Malden**, 359 Mass. 106, 110 (1971). The fair cash value of property cannot be proven with "mathematical certainty and must ultimately rest in the realm of opinion, estimate and judgment." **Boston Consol. Gas Co.**, 309 Mass. at 72. "The credibility of witnesses, the weight of the evidence, and inferences to be drawn from the evidence are matters for the board." **Cummington School of the Arts, Inc. v. Assessors of Cummington**, 373 Mass. 597, 605 (1977).

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

*Cohen v. Assessors of Boston*, 344 Mass. 268, 271 (1962), and that the assessed valuation of its property was improper. See *Foxboro Associates*, 385 Mass. at 691. The assessment is presumed valid until the taxpayer sustains its burden of proving otherwise. *Schlaiker*, 365 Mass. at 245. The Board found and ruled here that the appellant met its burden of proving that the subject property was overvalued for both fiscal years at issue in these appeals, and the Board therefore decided these appeals for the appellant and granted abatements as depicted in the below table.

	<u>Docket No. F318445</u> <u>Fiscal Year 2012</u>	<u>Docket No. F320681</u> <u>Fiscal Year 2013</u>
<b>Assessed Value*</b>	\$ 5,483,100	\$ 5,483,100
<b>Fair Cash Value</b>	\$ 3,765,000	\$ 3,715,000
<b>Abated Value</b>	\$ 1,718,100	\$ 1,768,100
<b>Commercial Tax Rate</b>	\$29.07/\$1,000	\$30.85/\$1,000
<b>Tax Abatement</b>	<b>\$49,945.17</b>	<b>\$54,545.89</b>

**APPELLATE TAX BOARD**

By: \_\_\_\_\_  
Thomas W. Hammond, Jr., Chairman

A true copy,

Attest: \_\_\_\_\_  
Clerk of the Board