

**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

**GEORGE KERAMARIS**

**v.**

**BOARD OF ASSESSORS OF  
THE TOWN OF TEWKSBURY**

Docket No. F333756

Promulgated:  
September 25, 2020

This is an appeal under the formal procedure pursuant to G.L. c. 59, §§ 64 and 65, from the refusal of the Board of Assessors of the Town of Tewksbury ("assessors" or "appellee") to abate a tax on a certain parcel of real estate located in Tewksbury owned by and assessed to George Keramaris ("appellant"), for fiscal year 2017 ("fiscal year at issue").

Commissioner Good heard this appeal. Chairman Hammond and Commissioners Rose, Elliott, and Metzger joined her in the decision for the appellee.

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

*Nicholas G. Keramaris, Esq.* for the appellant.

*Joanne Foley, assessor for the appellee.*

## **FINDINGS OF FACT AND REPORT**

On the basis of the testimony and exhibits offered into evidence at the hearing of this appeal, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2016, the appellant was the assessed owner of a 43,560-square-foot parcel of real estate, improved with a single-story commercial building that is located at 1899 Main Street in Tewksbury ("subject property"). The subject property's building contains five commercial spaces with a total rentable area of approximately 5,220 square feet.

For the fiscal year at issue, the assessors valued the subject property at \$680,700 and assessed a tax thereon, at the rate of \$27.82 per \$1,000, in the amount of \$18,937.07. In accordance with G.L. c. 59, § 57A, the appellant timely paid the tax due without incurring interest. On January 31, 2017, in accordance with G.L. c. 59, § 59, the appellant timely filed an abatement application with the assessors, which they denied on April 6, 2017. In accordance with G.L. c. 59, §§ 64 and 65, the appellant seasonably filed an appeal with the Board on July 6, 2017. On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

In support of his claim that the subject property was overvalued for the fiscal year at issue, the appellant presented an income analysis using the subject property's income and expense

figures for calendar year 2016 from which he calculated a net-operating income of \$43,854.54. Using the subject property's assessed value for the fiscal year at issue and dividing it into the net-operating income, the appellant calculated a capitalization rate of 6.4%. The appellant testified that one of the commercial spaces was vacant for all of 2016 and that another was vacant for four months. Therefore, in his opinion, the calculated capitalization rate was too low and suggested that a capitalization rate of 10% was more appropriate. The appellant did not provide any evidence to demonstrate that the reported income and expense figures represented market income and expenses, nor did he provide any additional support for his suggested capitalization rate.

To further support his claim of overvaluation, the appellant offered the property record cards of two nearby commercial properties and compared their per-square-foot assessed values with that of the subject property. The first property, located at 1921 Main Street, is also a single-story, multi-tenanted property. According to the property record card, this property has a total rentable area of 14,400 square feet, which includes 4,800 square feet of finished basement space. For the fiscal year at issue, the property was assessed at \$850,000, or approximately \$59.00 per square foot. The second property, located across the street at 1900 Main Street, is a 123,975-square-foot supermarket assessed at

\$8,896,500, or almost \$72.00 per square foot. Relying on this analysis, the appellant maintained that the subject property's per-square-foot assessed value of approximately \$130.00 was excessive.

For their part, the assessors rested on the presumed validity of the assessment.

The Board rejected the appellant's income analysis for several reasons. First, the appellant relied on calendar year 2016 income and expense figures. Given the relevant valuation date of January 1, 2016, the more appropriate data should have been gleaned from calendar year 2015. Second, the Board found that the appellant failed to offer any market data to support the cited income and expense figures. Even assuming the 2016 actual income and expenses were relevant, without verification from the market, they at best supported a leased-fee, as opposed to a fee-simple value. Lastly, the appellant offered virtually no evidence or market information to support his chosen capitalization rate. For these reasons, the Board determined that the appellant's income analysis provided virtually no probative evidence supporting the appellant's fee-simple valuation for the subject property for the fiscal year at issue.

With respect to the appellant's comparable-assessment analysis, the Board found that this method was also flawed. The Board found that the property located at 1900 Main Street, which

housed a regional chain supermarket and was more than twenty times larger than the subject property, was not comparable. With respect to the property located at 1921 Main Street, although it was similar in style - a multi-tenanted commercial building - it also had a larger rentable area than the subject property, and the appellant did not know whether its basement was leasable space. In either scenario, this property was larger than the subject property and the appellant failed to make or even consider any adjustments to compensate for its many differences compared to the subject property.

Based on the evidence presented, the Board found and ruled that the appellant failed to meet his burden of proving that the subject property was overvalued for the fiscal year at issue. Accordingly, the Board issued a decision for the appellee in this appeal.

#### **OPINION**

Assessors are required to assess real estate at its full and 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 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 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 the Board, the 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)).

Evidence of the assessed values of comparable properties may provide probative evidence of fair cash value. See G.L. c. 58A, § 12B; **John Alden Sands v. Assessors of Bourne**, Mass. ATB Findings of Fact and Reports 2007-1098, 1106-07 (citing **Chouinard v. Assessors of Natick**, Mass. ATB Findings of Fact and Reports 1998-299, 307-308). "Adjustments must be made to both assessed values and sales data to account for differences between the subject property and the properties offered for comparison." **Doherty v.**

**Assessors of Lee**, Mass. ATB Findings of Fact and Reports 2013-174, 181 (citing **Lareau v. Assessors of Norwell**, Mass. ATB Findings of Fact and Reports 2010-879, 889-90. "The assessments in a comparable-assessment analysis, like the sale prices in a comparable-sales analysis, must also be adjusted to account for differences with the subject." **Graham v. Assessors of West Tisbury**, Mass. ATB Findings of Fact and Reports 2007-321, 396.

In the present appeal, the appellant offered into evidence the assessments of two nearby commercial properties to show that the subject property was overvalued for the fiscal year at issue. Both properties, however, were larger than the subject property, one so much so that it was not comparable to the subject property. Further, the appellant failed to make any adjustments. Moreover, in his analysis the appellant failed to take into consideration the well-established principle that "[generally], as size increases, unit prices decrease. Conversely, as size decreases, unit prices increase." (APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 198 (14th ed. 2013); see also **Seto v. Assessors of Quincy**, Mass. ATB Findings of Fact and Reports 2006-585, 591. Accordingly, the Board was not persuaded by this argument, or by the evidence offered in support of it.

The appellant also presented an income analysis using the subject property's actual income and expense figures. The use of the income-capitalization approach is recognized as an appropriate

technique to use for valuing income-producing property. **Taunton Redevelopment Assocs. v. Assessors of Taunton**, 393 Mass. 293, 295 (1984).

The capitalization-of-income method analyzes the property's capacity to generate income over a one-year period and converts the capacity into an indication of fair cash value by capitalizing the income at a rate determined to be appropriate for the investment risk involved. See **Olympia & York State Street Co. v. Assessors of Boston**, 428 Mass. 236, 239 (1998). When performing a fee-simple valuation using a capitalization-of-income approach, the income stream used must reflect the property's earning capacity or market rental value. **Pepsi-Cola Bottling Co. v. Assessors of Boston**, 397 Mass. 447, 451 (1986). Using actual income figures may be acceptable, as long as they reflect market rents for the particular type of property involved. *Id.*; see also **Carye v. Assessors of Chelmsford**, 394 Mass. 1001 (1985) (affirming the Board's use of actual rents for valuation because there was substantial evidence in the record to support the Board's conclusion that actual rents were an adequate measure of the earning capacity of the real estate at issue in that appeal). Similarly, the expenses, allowances, and fees deducted should mirror the market. See **Olympia & York**, 428 Mass. at 239.

The capitalization rate selected for use in an income-capitalization methodology should consider the return necessary to



attract investment capital. **Taunton Redevelopment Assocs.**, 393 Mass. at 295. The assumptions and information used to develop a capitalization rate should be market based. APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 491-92 (14<sup>th</sup> ed. 2013) ("Direct capitalization employs capitalization rates . . . extracted or developed from market data" and "processes a single year's income into an indication of value . . . to produce a supportable indication of value when based on relevant market information . . .").

In the present appeal, the Board found that the appellant's income analysis was flawed for several reasons. First, the appellant relied on calendar year 2016 income and expense figures. Given the relevant valuation date of January 1, 2016, the more appropriate data should have been gleaned from calendar year 2015. Second, the Board found that the appellant failed to offer any market data to support the cited income and expense figures. Lastly, the appellant offered virtually no evidence to support his chosen capitalization rate. For these reasons, the Board determined that the appellant's income analysis did not provide persuasive evidence of value for the subject property for the fiscal year at issue.

On this basis, the Board found and ruled that the appellant failed to meet his burden of proving that the subject property was overvalued for the fiscal year at issue. The Board therefore decided this appeal for the appellee.

**THE APPELLATE TAX BOARD**

By:           /s/ Thomas W. Hammond            
Thomas W. Hammond, Jr., Chairman

A true copy:

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